

TAXATION OF INCOME FROM PROPERTY
TAX YEAR 2008 (1st July 2011 – 30th June 2012)
(Sections 15, 16, 155 & 169)

BASIS OF TAXATION

1. Income from property is taxable as a “**separate block of income**” on gross rental receipts. The basis of taxation is further sub-divided into **Fixed Tax Regime** (where no withholding tax is deducted) and **Final Tax Regime** (where withholding tax is deducted. In both the cases the tax paid/withheld is the full and final discharge of its tax liability Income from property.
2. Income from property is taxable on the basis of gross rental receipts and no deduction of any expenditure is allowable against receipts nor any tax credit is admissible against tax liability.

CHARGEABLE AMOUNT [Section 15 & 16]

1. The rent received or receivable by a person for a tax year is chargeable to tax (includes any forfeited deposit in that year under the head “**Income from Property**”.
2. Accordingly the rent received or receivable for a tax year is chargeable to tax whether the rent has been actually received during the year or not.
3. In case the rent received or receivable by the owner is less than the “**fair market rent**” of the land or building, the amount chargeable to tax will be the “**fair market rent**”. The “**fair market rent**” is not defined in the Ordinance, it means the rent the property would ordinarily fetch in the open market. [Sec. 15(4)]
4. Where the fair market rent is included in the income chargeable to tax under the head “salary” the provisions mentioned in para 3 above will not be applicable. [Sec. 15(5)]

DEFINITION OF RENT

The term “**rent**” has been defined in Section 15(2) of the Ordinance to mean any amount received or receivable by the owner of land or a building as consideration for the use or occupation of, or the right to use or occupy, the land or building, and includes any forfeited deposit paid under a contract for the sale of land or a building.

INCLUSIONS IN RENT [Section 16]

1. Any amount received by way of advance or deposit or paguee by the owner of immovable property from a tenant, which is not adjustable against the rent payable by

the tenant, shall, as provided in section 16(1) be chargeable to tax in equal proportion in ten years from the tax year in which it was received.

2. In case the tenant vacates the premises before the expiry of 10 years, no portion of amount shall be allocated to the income of the year in which it is refunded and thereafter. If the property is let out to another tenant, the amount received from other tenant which is not adjustable against the rent will be reduced by the amount of previous amount charged to tax and the balance shall be deemed to be income and subjected to tax in equal proportion in subsequent 10 years as mentioned in para 1 above.

EXCLUSIONS FROM RENT [Sections 15(3) &(3A)]

1. Section 15(3) provides that the rent in respect of the lease of a building together with plant and machinery shall not be chargeable to tax under the head of Income from Property but shall be taxed under the head “**Income from Other Sources**”.

2. Similarly u/s 15(3A) any amount included in rent which relates to the provision of amenities, utilities or other services connected with the renting of the building shall be excluded from rental income and be chargeable to tax under the head “**Income from Other Sources**” instead of Income from Property.

EXEMPTIONS

1. The rent received or receivable shall not be chargeable to tax in respect of a tax payer who -

- i. Is an individual or association of person
- ii. Derives income chargeable to tax under this section not exceeding Rs.1,50,000/- in a tax year; and
- iii. Does not derive taxable income under any other head.

Note: As per FBR clarification vide Circular No. 3 of 2007 dated 29.9.2007 in case a person earned salary income of Rs. 150,000/- and also earned property income of Rs. 150,000/- his property income will not be exempted but chargeable to tax @ 5% as he has drawn taxable salary income of Rs. 150,000/- although it is below the taxable limit but chargeable @ 0%.

2. The following recipients of rent are exempted from tax under section 49 of the Income Tax Ordinance:

- i. The Federal Government;
- ii. A Provincial Government and
- iii. A Local Authority

TAX RATE

Under section 15(6) the income from property is liable to tax at the rate specified in Division VI of Part I of the First Schedule, which is 5% of gross amount of rent.

WITHHOLDING TAX PROVISIONS

[Section 155 & 169]

1. Every prescribed person making a payment in full or part (including a payment by way of advance) to any person on account of rent of immovable property (including rent of furniture and fixtures and amount of services relating to such property) shall deduct tax from the gross amount of rent paid at the rate specified in Division V of Part III of the First Schedule.
2. In this section “prescribed person” means:-
 - i. The Federal Government
 - ii. A Provincial Government
 - iii. A Local Authority
 - iv. A Company
 - v. A Non-profit Organization
 - vi. A Diplomatic mission of a foreign state; or
 - vii. Any other person notified by the Central Board of Revenue for the purpose of this section.
3. Above stated persons shall be Withholding Agents for tax collection on payment of Rent.

WITHHOLDING TAX RATE

The rate of withholding tax specified in Division V of Part III of the First Schedule is 5% of gross amount of rent paid.

STATEMENTS TO BE FIELD

1. The Prescribed person, who has deducted tax from the income from property, shall furnish a monthly and annual prescribed statement within 15 days of the close of the each month and within 2 months of end of the financial year respectively with the Commissioner of Income-tax concerned.
2. In case of Corporate withholding agents e-filing of monthly and annual statements of deduction of tax is obligatory.

EXEMPTION FROM WITHHOLDIND TAX

The following clauses of The Second Schedule provide exemption from deduction of withholding tax from rent:

Clause (16) of Part I

Institutions of the Agha Khan Development Network (Pakistan) listed in Schedule 1 of the Accord and Protocol dated November 13, 1994, executed between the Government of the Islamic Republic of Pakistan and Agha Khan Development Network.

Clause (47) of Part I

A person who produces a certificate from the Commissioner to the effect that his income during the income year is exempt from tax.

MISCELLANEOUS PROVISIONS

EXEMPTION FROM ADVANCE TAX PAYMENT

On income from property no advance tax payable under section 147(1) (ba) of the Income Tax Ordinance.

REFUND/ADJUSTMENT

1. The withholding tax deducted shall be refundable in case of Individuals and AOP if the rent does not exceed Rs. 150,000 and no taxable income is derived under any other head of income.
2. Similarly, the tax deducted from amounts covered in the exclusions from rent will be treated as Advance tax and adjusted in the tax chargeable on Income from Other Sources.

JOINTLY-OWNED PROPERTY

1. In case of jointly owned property income from property is not assessed as AOP.
2. Where the property is owned by two or more persons and they have definite and ascertainable share in such property, each person is required to declare his respective share of income from property in his taxable income for the year.